

AMENDED IN SENATE MARCH 22, 2004

**SENATE BILL**

**No. 1644**

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**Introduced by ~~Senators Romero and Escutia~~ Senator Romero**  
(~~Coauthor: Assembly Member Laird~~)  
(*Principal coauthors: Senators Escutia and Kuehl*)  
(*Coauthor: Senator Machado*)  
(*Coauthor: Assembly Member Pavley*)

February 20, 2004

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An act to add Section 1418.92 to the Health and Safety Code, and to amend Sections 15630 and 15631 of the Welfare and Institutions Code, relating to long-term health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1644, as amended, Romero. Long-term health care: deaths of residents: reporting requirements.

(1) The Long-Term Care, Health, Safety, and Security Act of 1973 establishes a citation system for the imposition of civil sanctions against long-term health care facilities in violation of federal and state laws and regulations relating to patient care. That act also establishes an inspection and reporting system to ensure that long-term health care facilities are in compliance with state statutes and regulations pertaining to patient care, and a provisional licensing mechanism to ensure that full-term licenses are issued only to those long-term health care facilities that meet state standards relating to patient care. A violation of the act is a misdemeanor.

This bill would require a long-term health care facility to ~~report~~ *make a written report of* the death of any resident of the facility to the county medical examiner or coroner *and would require the medical examiner or coroner to acknowledge receipt of the report.*

(2) The Elder Abuse and Dependent Adult Civil Protection Act defines mandated reporters and establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires a mandated reporter, as defined, to report known or suspected physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of elder or dependent adults in long-term health care facilities.

This bill, in addition, would require a mandated reporter, *with the exception of the State Department of Health Services*, to report to the county coroner or medical examiner a death of a resident of a long-term health care facility if the resident was the subject of a report described above *and would require the medical examiner or coroner to acknowledge receipt of the report*.

This bill would also authorize persons who are not mandated reporters to report to the county medical examiner or coroner instances of abuse and death of residents in long-term health care facilities, and would require the medical examiner or coroner to acknowledge receipt of the report.

By increasing the duties of county medical examiners and coroners, and by expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Section 1418.92 is added to the Health and Safety Code, to read:

1418.92. (a) A long-term health care facility shall report the death of any resident of the facility to the medical examiner or coroner of the county in which the death occurred. *The report shall be in writing and shall include the pertinent identifying information that the local coroner or medical examiner deems appropriate. The medical examiner or coroner to whom the report is made shall provide acknowledgement of receipt of the report to the person who made the report.*

(b) The report required by subdivision (a) shall be made by the facility immediately upon the death of the resident, or within 24 hours of the death and prior to any changes to the body by the facility, and before the facility discharges the body to a funeral home or to any other entity or facility.

(c) A failure to comply with this section shall be a class “B” violation, *as described in subdivision (e) of Section 1424.*

SEC. 2. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone

1 immediately or as soon as practicably possible, and by written  
2 report sent within two working days, as follows:

3 (A) If the abuse has occurred in a long-term care facility, except  
4 a state mental health hospital or a state developmental center, the  
5 report shall be made to the local ombudsman or the local law  
6 enforcement agency.

7 Except in an emergency, the local ombudsman and the local law  
8 enforcement agency shall, as soon as practicable, do all of the  
9 following:

10 (i) Report to the State Department of Health Services any case  
11 of known or suspected abuse occurring in a long-term health care  
12 facility, as defined in subdivision (a) of Section 1418 of the Health  
13 and Safety Code.

14 (ii) Report to the State Department of Social Services any case  
15 of known or suspected abuse occurring in a residential care facility  
16 for the elderly, as defined in Section 1569.2 of the Health and  
17 Safety Code, or in an adult day care facility, as defined in  
18 paragraph (2) of subdivision (a) of Section 1502.

19 (iii) Report to the State Department of Health Services and the  
20 California Department of Aging any case of known or suspected  
21 abuse occurring in an adult day health care center, as defined in  
22 subdivision (b) of Section 1570.7 of the Health and Safety Code.

23 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
24 any case of known or suspected criminal activity.

25 (B) If the suspected or alleged abuse occurred in a state mental  
26 hospital or a state developmental center, the report shall be made  
27 to designated investigators of the State Department of Mental  
28 Health or the State Department of Developmental Services, or to  
29 the local law enforcement agency.

30 Except in an emergency, the local law enforcement agency  
31 shall, as soon as practicable, report any case of known or suspected  
32 criminal activity to the Bureau of Medi-Cal Fraud and Elder  
33 Abuse.

34 (C) If the abuse has occurred any place other than one described  
35 in subparagraph (A), the report shall be made to the adult  
36 protective services agency or the local law enforcement agency.

37 (2) A mandated reporter, *with the exception of the State*  
38 *Department of Health Services*, who is required to report an  
39 incident pursuant to paragraph (1) that involves a resident in a  
40 long-term health care facility, as defined in Section 1418 of the

1 Health and Safety Code, and the resident who is the subject of the  
2 report dies, shall immediately upon the resident's death, or within  
3 24 hours of learning of the death if the mandated reporter is not  
4 aware of the death when it occurs, report the death and the incident  
5 to the medical examiner or coroner of the county in which the  
6 death occurred. *The mandated reporter may communicate the*  
7 *report by telephone, facsimile, or electronic mail. The medical*  
8 *examiner or coroner to whom the report is made shall provide*  
9 *acknowledgement of receipt of the report to the mandated reporter*  
10 *who made the report.*

11 (3) (A) A mandated reporter who is a clergy member who  
12 acquires knowledge or reasonable suspicion of elder or dependent  
13 adult abuse during a penitential communication is not subject to  
14 paragraph (1). For purposes of this subdivision, "penitential  
15 communication" means a communication that is intended to be in  
16 confidence, including, but not limited to, a sacramental confession  
17 made to a clergy member who, in the course of the discipline or  
18 practice of his or her church, denomination, or organization is  
19 authorized or accustomed to hear those communications and under  
20 the discipline tenets, customs, or practices of his or her church,  
21 denomination, or organization, has a duty to keep those  
22 communications secret.

23 (B) Nothing in this subdivision shall be construed to modify or  
24 limit a clergy member's duty to report known or suspected elder  
25 and dependent adult abuse when he or she is acting in the capacity  
26 of a care custodian, health practitioner, or employee of an adult  
27 protective agency.

28 (C) Notwithstanding any other provision in this section, a  
29 clergy member who is not regularly employed on either a full-time  
30 or part-time basis in a long-term care facility or does not have care  
31 or custody of an elder or dependent adult shall not be responsible  
32 for reporting abuse or neglect that is not reasonably observable or  
33 discernible to a reasonably prudent person having no specialized  
34 training or experience in elder or dependent care.

35 (4) (A) A mandated reporter who is a physician and surgeon,  
36 a registered nurse, or a psychotherapist, as defined in Section 1010  
37 of the Evidence Code, shall not be required to report, pursuant to  
38 paragraph (1), an incident where all of the following conditions  
39 exist:

1 (i) The mandated reporter has been told by an elder or  
2 dependent adult that he or she has experienced behavior  
3 constituting physical abuse, abandonment, abduction, isolation,  
4 financial abuse, or neglect.

5 (ii) The mandated reporter is not aware of any independent  
6 evidence that corroborates the statement that the abuse has  
7 occurred.

8 (iii) The elder or dependent adult has been diagnosed with a  
9 mental illness or dementia, or is the subject of a court-ordered  
10 conservatorship because of a mental illness or dementia.

11 (iv) In the exercise of clinical judgment, the physician and  
12 surgeon, the registered nurse, or the psychotherapist, as defined in  
13 Section 1010 of the Evidence Code, reasonably believes that the  
14 abuse did not occur.

15 (B) This paragraph shall not be construed to impose upon  
16 mandated reporters a duty to investigate a known or suspected  
17 incident of abuse and shall not be construed to lessen or restrict any  
18 existing duty of mandated reporters.

19 (5) (A) In a long-term care facility, a mandated reporter shall  
20 not be required to report as a suspected incident of abuse, as  
21 defined in Section 15610.07, an incident where all of the following  
22 conditions exist:

23 (i) The mandated reporter is aware that there is a proper plan  
24 of care.

25 (ii) The mandated reporter is aware that the plan of care was  
26 properly provided or executed.

27 (iii) A physical, mental, or medical injury occurred as a result  
28 of care provided pursuant to clause (i) or (ii).

29 (iv) The mandated reporter reasonably believes that the injury  
30 was not the result of abuse.

31 (B) This paragraph shall not be construed to require a mandated  
32 reporter to seek, nor to preclude a mandated reporter from seeking,  
33 information regarding a known or suspected incident of abuse  
34 prior to reporting. This paragraph shall apply only to those  
35 categories of mandated reporters that the State Department of  
36 Health Services determines, upon approval by the Bureau of  
37 Medi-Cal Fraud and Elder Abuse and the state long-term care  
38 ombudsman, have access to plans of care and have the training and  
39 experience necessary to determine whether the conditions  
40 specified in this section have been met.

1 (c) (1) Any mandated reporter who has knowledge, or  
2 reasonably suspects, that types of elder or dependent adult abuse  
3 for which reports are not mandated have been inflicted upon an  
4 elder or dependent adult, or that his or her emotional well-being  
5 is endangered in any other way, may report the known or suspected  
6 instance of abuse.

7 (2) If the suspected or alleged abuse occurred in a long-term  
8 care facility other than a state mental health hospital or a state  
9 developmental center, the report may be made to the long-term  
10 care ombudsman program. Except in an emergency, the local  
11 ombudsman shall report any case of known or suspected abuse to  
12 the State Department of Health Services and any case of known or  
13 suspected criminal activity to the Bureau of Medi-Cal Fraud and  
14 Elder Abuse, as soon as is practicable.

15 (3) If the suspected or alleged abuse occurred in a state mental  
16 health hospital or a state developmental center, the report may be  
17 made to the designated investigator of the State Department of  
18 Mental Health or the State Department of Developmental Services  
19 or to a local law enforcement agency or to the local ombudsman.  
20 Except in an emergency, the local ombudsman and the local law  
21 enforcement agency shall report any case of known or suspected  
22 criminal activity to the Bureau of Medi-Cal Fraud and Elder  
23 Abuse, as soon as is practicable.

24 (4) If the suspected or alleged abuse occurred in a place other  
25 than a place described in paragraph (2) or (3), the report may be  
26 made to the county adult protective services agency.

27 (5) If the conduct involves criminal activity not covered in  
28 subdivision (b), it may be immediately reported to the appropriate  
29 law enforcement agency.

30 (d) When two or more mandated reporters are present and  
31 jointly have knowledge or reasonably suspect that types of abuse  
32 of an elder or a dependent adult for which a report is or is not  
33 mandated have occurred, and when there is agreement among  
34 them, the telephone report may be made by a member of the team  
35 selected by mutual agreement, and a single report may be made  
36 and signed by the selected member of the reporting team. Any  
37 member who has knowledge that the member designated to report  
38 has failed to do so shall thereafter make the report.

39 (e) A telephone report of a known or suspected instance of elder  
40 or dependent adult abuse shall include, if known, the name of the



1 person making the report, the name and age of the elder or  
2 dependent adult, the present location of the elder or dependent  
3 adult, the names and addresses of family members or any other  
4 person responsible for the elder or dependent adult's care, the  
5 nature and extent of the elder or dependent adult's condition, the  
6 date of the incident, and any other information, including  
7 information that led that person to suspect elder or dependent adult  
8 abuse, as requested by the agency receiving the report.

9 (f) The reporting duties under this section are individual, and  
10 no supervisor or administrator shall impede or inhibit the reporting  
11 duties, and no person making the report shall be subject to any  
12 sanction for making the report. However, internal procedures to  
13 facilitate reporting, ensure confidentiality, and apprise supervisors  
14 and administrators of reports may be established, provided they  
15 are not inconsistent with this chapter.

16 (g) (1) Whenever this section requires a county adult  
17 protective services agency to report to a law enforcement agency,  
18 the law enforcement agency shall, immediately upon request,  
19 provide a copy of its investigative report concerning the reported  
20 matter to that county adult protective services agency.

21 (2) Whenever this section requires a law enforcement agency  
22 to report to a county adult protective services agency, the county  
23 adult protective services agency shall, immediately upon request,  
24 provide to that law enforcement agency a copy of its investigative  
25 report concerning the reported matter.

26 (3) The requirement to disclose investigative reports pursuant  
27 to this subdivision shall not include the disclosure of social  
28 services records or case files that are confidential, nor shall this  
29 subdivision be construed to allow disclosure of any reports or  
30 records if the disclosure would be prohibited by any other  
31 provision of state or federal law.

32 (h) Failure to report physical abuse, abandonment, abduction,  
33 isolation, financial abuse, or neglect of an elder or dependent adult,  
34 in violation of this section, is a misdemeanor, punishable by not  
35 more than six months in the county jail, by a fine of not more than  
36 one thousand dollars (\$1,000), or by both that fine and  
37 imprisonment. Any mandated reporter who willfully fails to report  
38 physical abuse, abandonment, abduction, isolation, financial  
39 abuse, or neglect of an elder or dependent adult, in violation of this  
40 section, where that abuse results in death or great bodily injury,



1 shall be punished by not more than one year in a county jail, by a  
2 fine of not more than five thousand dollars (\$5,000), or by both  
3 that fine and imprisonment.

4 SEC. 3. Section 15631 of the Welfare and Institutions Code  
5 is amended to read:

6 15631. (a) Any person who is not a mandated reporter under  
7 Section 15630, who knows, or reasonably suspects, that an elder  
8 or a dependent adult has been the victim of abuse may report that  
9 abuse to a long-term care ombudsman program or local law  
10 enforcement agency when the abuse is alleged to have occurred in  
11 a long-term care facility.

12 (b) Any person who is not a mandated reporter under Section  
13 15630, who knows, or reasonably suspects, that an elder or a  
14 dependent adult has been the victim of abuse in any place other  
15 than a long-term care facility may report the abuse to the county  
16 adult protective services agency or local law enforcement agency.

17 (c) Any person who is not a mandated reporter under Section  
18 15630, who knows, or reasonably suspects, that an elder or a  
19 dependent adult has been the victim of abuse in a long-term health  
20 care facility, as defined in Section 1418 of the Health and Safety  
21 Code, and knows that the victim has died, may report the abuse and  
22 the death to the medical examiner or coroner of the county in  
23 which the death occurred. The person may communicate the report  
24 by telephone, facsimile, or electronic mail. The medical examiner  
25 or coroner to whom the report is made shall provide  
26 acknowledgement of receipt of the report to the person who made  
27 the report.

28 SEC. 4. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution for  
30 certain costs that may be incurred by a local agency or school  
31 district because in that regard this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.

37 However, notwithstanding Section 17610 of the Government  
38 Code, if the Commission on State Mandates determines that this  
39 act contains other costs mandated by the state, reimbursement to  
40 local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division  
2 4 of Title 2 of the Government Code. If the statewide cost of the  
3 claim for reimbursement does not exceed one million dollars  
4 (\$1,000,000), reimbursement shall be made from the State  
5 Mandates Claims Fund.

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